IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14471 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KAMLESHKUMAR NARSINHBHAI TAILOR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 14471 of 2004

MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Surat City, on 13th April 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 7th September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the fact of filing of solitary crime against the petitioner before Prohibition Police Station, Northern Zone, Surat on 4th March, 2004 whereby it was alleged that the petitioner was found in possession of 648 bottles of prohibited foreign liquor. After going through exhaustively the investigation papers in the said crime, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. The detaining authority also came to the conclusion that the activities of the petitioner were bootlegging activities within the meaning of PASA Act.

3. Secondly, the detaining authority relied upon two incamera statements as recorded by sponsoring authority on 1st April, 2004 and verified by the detaining authority on 11th April, 2004. The identity of the said witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. One witness out of the two, referred to an incident occurred on 8th March, 2004 on that day in the evening, the witness was passing through the area of Mahidharpura Police Station with his goods carriage vehicle at about 7.00 P.M., the petitioner and his accomplices stopped the witness and demanded the goods carriage vehicle of the witness for transporting illegal prohibited liquor on hire charges. On refusal by the witness, the petitioner and his accomplices got excited and the witness was caught hold by the petitioner and his accomplices started beating the witness. On raising shouts for help by the witness, a crowd was gathered but none-dared to intervene. The petitioner directed his accomplices to beat the persons gathered around and, therefore, the accomplices of the petitioner took out weapons like hockey stick etc. rushed towards the crowd and started beating them. Thereupon, the persons gathered there running helter-skelter, the drivers of the vehicles ran their vehicles unattended, residence locked themselves in their houses and the traders closed their business. The traffic was disrupted and atmosphere of terror and fear was created. Ultimately by act of supplication, the

witness could save himself.

4. The second witness referred to an incident occurred on 15th March, 2004, on that day about 6.30 P.M. when the witness was at his house in Mahidharpura area, the petitioner and his accomplices approached the witness and stated that the police knew the places where the petitioner was concealing his prohibited liquor and, therefore, the bulk of prohibited foreign liquor which they had brought with them and was asked to be kept by the witness in his house. On refusal by the witness to conceal the bulk of prohibited foreign liquor of the petitioner in his house, the petitioner and his accomplices got excited and after caught holding the witness, all of them started beating him. A crowd of passerby, vehicles drivers, and shop keepers of the locality were gathered there and out of them some attempted to rescue the witness, but on direction by the petitioner, his accomplices with weapons like iron-rods rushed towards the crowd to harm them and, therefore, the persons gathered around running helter-skelter. On account of this situation, traffic was disturbed, the petitioner and his accomplices damaged other vehicles parked in the locality. The shop keepers of the area closed their business and the residence locked themselves inside their houses. Ultimately, by act of supplication, the witness could save himself.

5. From the above materials, the detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of the public order and adversely affecting the public health. The detaining authority came to the conclusion that the petitioner was head strong and ferocious person and was keeping deadly weapon with him. The petitioner was forming a gang of headstrong persons and was in habit of picking up quarrels with innocent citizens and to beat them to execute his bootlegging activities. The detaining authority also came to the conclusion that the bootlegging activities of the petitioner were required to be prevented forthwith. After taking into consideration other remedies and measures, which may be taken against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the order of detention of the petitioner, which is under challenge in this petition.

6. Learned advocate Ms.Banna Dutta for the petitioner and learned AGP Mr.H.M.Prachchhak for the

respondent No.3 were heard at length.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent materials placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon cogent and credible material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or widespread or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life property or the public health. While undertaking this exercise, the detaining authority must apply his mind about the difference between the cases falling in the category of "breach of law and order" and the cases falling in the category of "breach of public order."

9. So far as the registration of solitary crime against the petitioner is concerned, on going through the investigation papers, it is clear that the activities disclosed through the said investigation papers, it could not be said that the public order was disturbed within the meaning of PASA Act. At the most, filing of criminal cases under the Bombay Prohibition Act may be a breach of the Bombay Prohibition Act for which the petitioner shall be tried and may be punished, if found guilty, but the act constituting the offences cannot be said to have the even tempo of the life of the community. The filing of solitary criminal case under the Bombay Prohibition Act, therefore, have no bearing at all on the question of maintenance of the public order.

10. The rest of the material, which relied upon by the detaining authority is in the form of two incamera statements. While any activity is to be judged within the scope, as to whether such activities disturbed the public order, it becomes the duty of the detaining authority to consider fall out, reach and impact of the activities, revealing through materials placed before him and then come to the conclusion that whether potentiality of the activities alleged was capable of disturbing the public order. On going through minutely and carefully

and applying the above said principle of law, it clearly appears that two incidents narrated through incamera statements were more individual disputes then to involve the society at large or disturbing the even tempo of life of the community. Employing phrases by the witnesses like disruption of traffic and normal life and spreading of fear and terror, or employing such phrases by the detaining authority in the reasons, could not stretch the alleged activities to the extent of such activities disturbing the public order. While such activities are scanned through its fall out, reach and impact, it is clear that these are not the activities disturbing the public order. Therefore, the potentiality of the act alleged through incamera statements, even from the bare reading of them, do not disclose capability to disturb the even tempo of life of the community or society at large or section of the society. It is clear that from the said activity, neither widespread danger to the society nor dangerousness or harmfulness affecting the society could be inferred from such activities of the petitioner disclosing through incamera statements. Therefore, even after taking two incamera statements on there face value they are unable to convince that the activities disclosed by the statements were prejudicial to the maintenance of public order. At the most the acts disclosed through the statements, may be breach of law and order and could be taken care by the general law.

11. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20 and 21 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above said decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra]. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the Police Commissioner, Surat City on 13th April, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Kamleshkumar Narsinhbhai Tailor is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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